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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/757,730

01/13/2004

Wayne R. Arden

2017

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24264 7590 07/16/2007  
MARTIN & HENSON, P.C.  
9250 W 5TH AVENUE  
SUITE 200  
LAKEWOOD, CO 80226

EXAMINER

PATEL, TARLA R

ART UNIT

PAPER NUMBER

3772

MAIL DATE

DELIVERY MODE

07/16/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/757,730	<b>Applicant(s)</b> ARDEN, WAYNE R.	
	<b>Examiner</b> Tarla R. Patel	<b>Art Unit</b> 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 May 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 May 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Response to Amendment***

Amendment to Drawing and Specification filed on 5/1/07 are acknowledged and approved.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

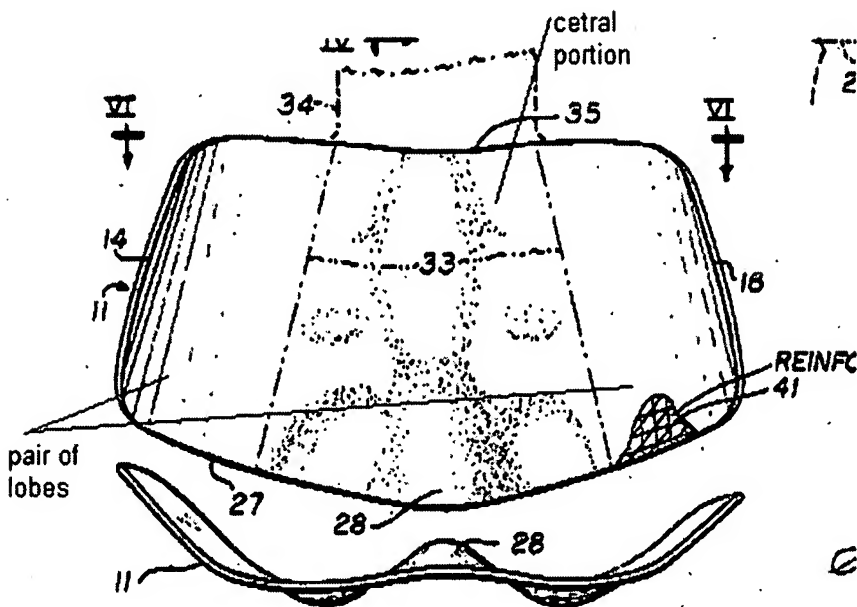
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1-3, 5-7,9-32 rejected under 35 U.S.C. 103(a) as being unpatentable over Swift (3,434,469) in view of Morrow (6,165,147).

Swift discloses a brace (10) adapted to mount externally of a person's torso in order to support/sheet the person's back, the brace comprises a support piece/sheath (11) including an elongated central portion (28) and a plurality of pairs of oppositely projecting lobe portions (14,16 and column 3 lines 26-44) extending laterally of said central portion, said lobe portions constructed of a stiff yet bendable material (column 4, lines 49-54), and a support band (10) sized and adapted to encircle the person's torso and operative to releasably secure said support piece alongside the person's

back when in a mounted state (see fig 1), said support band constructed of a flexible material (column 4 lines 14-18) and having opposite end portion provided with cooperative fasteners (18,19) whereby said end portions may be releasably secured together in a fastened state.

With respect to claims 5-6,15-21 and 23-24 Swift discloses sleeves and pouches (13) directly connected. With respect to the limitation of the "sleeve" the examiner interpreted the pockets (13) as sleeves and pouches, since these pockets of Swift are made of flexible, breathable material and a pouch inherently includes an interior portion (inside of pocket, column 3 lines 1-25). With respect to the limitation of the "stretchable material" the examiner interpreted elastic fabric as flexible, breathable material to be made of any group of fabrics consist of non-stretchy fabrics and resilient stretchy fabrics that is required by claim 15. As required by claim 20 pouch and said end portions are formed of a common material (column 3 lines 1-25).



With respect to claim 25, Swift inherently discloses device sheath interior has a periphery contoured to the shape of said support piece (see fig 2).

With respect to claim 22, Swift inherently discloses said fasteners permit size adjustment of said band, since it made of elastic material it is able to stretch.

With respect to claims 7, Swift discloses said sleeves are in parallel spaced relation to one another (see fig 5).

With respect to claims 9 and 27, Swift discloses lobe portions of each said pair extend equidistantly of said central portion (see fig 5).

With respect to claims 10 and 28, Swift discloses said lobe portions being formed by notches located between adjacent ones of said lobe portions (14,16, see fig above).

With respect to claims 11 and 29, Swift discloses at least three pairs of lobe portions, there being a primary lobe portions (central) and two secondary lobe (side lobes) portions, one on either side of said primary pair of lobe portions.

With respect to claims 12 and 30, Swift discloses primary portion (central) is greater than secondary lobe portions (14,16) (see fig 5).

With respect to claims 13 and 31, Swift discloses central portion (see above) is wider than secondary lobe portions (14,16) (see fig 6).

However Swift does not discloses that the device is made of stiff yet bendable material and the pocket to be provided with a releasable pouch closure.

However Morrow teaches a lower back and hip support device having pouch with closure (20) and back support device made of plastic having degree of flexibility (column 3 lines 12-19). At the time invention was made, it would have been obvious to one having ordinary skill in to use the teaching of having pouch closure and plastic having flexibility to the device

of Swift, as taught by Morrow to better fit the device to user's back and close the pouch while in use to avoid slipping of the brace unit from the waistband.

3. Claims 4 and 8 rejected under 35 U.S.C. 103(a) as being unpatentable over Swift and Morrow further in view of Petty-Saphon (5,737,774).

Swift and Morrow substantially discloses the invention as claimed, see rejection to claims 1-3, 5-7, 9-32 above; however, Swift and Morrow do not specifically disclose that said strips extend perpendicularly to central portion and strips of a different width than another strips.

However Petty-Saphon teaches a back support with strips (1) extending perpendicularly to central portion to reduce flexion or extension or simply to make the person feel comfortable and strips are different in width (see figs 1 and 2).

At the time of the invention, it would have been an obvious to one having ordinary skill in the art to modify the device of Swift and Morrow with the strips of Petty-Saphon (element 1) to better support the back brace. With respect to claim 8, the back brace with the strips are of a different width than another of said strips, it would have been obvious to one of

ordinary skill in the art to modify the strips of Swift, Morrow and Petty-Saphon, as a matter of design choice to make the strips of different width, since applicant has not disclosed that strips having same width solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with strips with different width.

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1-32 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

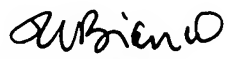
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tarla R. Patel whose telephone number is 571-272-3143. The examiner can normally be reached on M-T 6-3.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TP

  
PATRICIA BIANCO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700

7/9/07